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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/683,273

12/06/2001

Wu-Sung Kim

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12/03/2003

BURNS DOANE SWECKER & MATHIS L L P
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EXAMINER

MUROMOTO JR, ROBERT H

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 12/03/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/683,273

Applicant(s)

KIM, WU-SUNG

Examiner

Robert H Muromoto, Jr.

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-- The MAILING DATE of this communication appears in the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Middleton in view of Ardizzone and Lever.

Middleton teaches a breathable fabric for use in a wearable article. The fabric comprises thermally efficient layer of neoprene rubber sandwiched between a second layer of a permeable material capable of being worn next to the user's skin such as lightweight four way stretch cotton and a third layer also of a permeable material, such as a lightweight four-way stretch cotton for domestic use or a more durable nylon for industrial use. Any suitable external layer may be used as long as the wicking action of the perforations is not hampered.

The neoprene and inner layers are perforated in generally circular shape with a diameter of about .5mm to about 10mm. It is preferred that this fabric use more smaller perforations rather than fewer larger ones which can be adjusted for a particular end use.

Although Middleton teaches these limitations Middleton does not specifically teach an outer spandex layer, or that the neoprene layer be anti-bacterial and include bio-ceramics.

However Ardizzone teaches a therapeutic device that uses bio-ceramic fibers to take advantage of their far infrared wave emitting characteristics when heated to or above the body temperature of 98.6 degrees Fahrenheit. Recent developments have shown that human tissue is advantageously susceptible to light in the far infrared range. The waves serve to warm objects thermally when they come into contact with the waves.

Additionally, Lever teaches rubber articles and derivatives thereof such as neoprene that incorporate silver based antimicrobial compounds to provide rubber products with antibacterial, antifungal, antimildew, and odor control properties for the user.

Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to modify the fabric of Middleton to include an anti-bacterial neoprene and bio-ceramics layer to provide the user with the anti-bacterial and therapeutic warming effects of such a neoprene and bio-ceramic layer.

With respect to the spandex layer limitation, the use of stretch material including spandex is recognized as a common covering/outer layer for neoprene material. The use of which provides stretch and comfort for the wearer since it allows the neoprene garment to which it is formed to fit any number of wearers in a form fitting manner.

Response to Arguments

Applicant's arguments filed 9/26/2003 have been fully considered but they are not persuasive. Applicant argues that there would not have been motivation to combine the bio-ceramic fibers of Ardizzone et al. with the teachings of Middleton and Lever. The examiner does not agree. There are many motivational factors of Ardizzone to be combined with the teachings of Middleton and Lever. The stated objective of Ardizzone is to "provide magnetotherapy and far infra-red wave treatment in an integral and consolidated device that is convenient to apply and use (col. 2., lines 29-33)." Middleton clearly provides a tight fitting neoprene fabric structure. Lever states that neoprene can be modified to include anti-bacterial properties. Additionally, the fact that the Ardizzone reference uses bio-ceramic fibers, fibers being widely known and understood to be used in the construction of fabrics which are clearly used to provide wearable products shows that these references are clearly in the same motivational problem solving areas. As such, the rejection remains and is considered proper.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert H Muromoto, Jr. whose telephone number is 703-306-5503. The examiner can normally be reached on 8-530, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0861.

bhm
November 24, 2003


JOHN J. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700